

Court of Appeals, State of Michigan

ORDER

People of MI v Gibran Gotcher

Docket No. 290738

LC No. 06-011501-FC

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Brian K. Zahra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting leave to appeal, the Court orders that the February 13, 2009, order denying the prosecution's motion to withdraw defendant's guilty plea is REVERSED. First, the trial court erroneously ruled that the prosecutor's delay in filing the motion was unreasonable solely because the prosecution could not wait more than twelve months from sentencing. Unlike subsection (C), MCR 6.310(E) contains no time limitation on the prosecution's filing of the motion. Second, the trial court clearly erred in ruling that there was no meeting of the minds on the consequences for defendant's failure to provide testimony against other codefendants, as required by the plea agreement. *People v Swirles (After Remand)*, 218 Mich App 133, 136-137; 553 NW2d 357 (1996). Defendant's attorney testified at the February 6, 2009, hearing that he told defendant the prosecution could "come back" and set aside the plea agreement and reinstate the first-degree murder charge if he did not testify against other codefendants, and defendant offered no testimony to contradict this testimony or to indicate that he did not understand the consequences. Moreover, the failure to place the consequences in the plea agreement should not have precluded the prosecutor's request to set aside the plea after defendant failed to comply with the cooperation term of agreement by refusing to testify. MCR 6.310(E) allows the prosecution to move to set aside the plea "if the defendant has failed to comply with the terms of a plea agreement." See also *People v Hannold*, 217 Mich App 382, 390; 551 NW2d 710 (1996) ("a defendant who has not lived up to his part of a plea bargain has no right to specific performance"). Accordingly, the matter is REMANDED to the trial court for entry of an order granting the prosecution's motion, and for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 12 2009

Date

Sandra Schultz Mengel
Chief Clerk